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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Herbert Benson Scher

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06/10/2005

SYNGENTA CROP PROTECTION, INC.
PATENT AND TRADEMARK DEPARTMENT
410 SWING ROAD
GREENSBORO, NC 27409

EXAMINER

FUBARA, BLESSING M

ART UNIT

PAPER NUMBER

1618

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/873,418

Applicant(s)

SCHER ET AL.

Examiner

Blessing M. Fubara

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-43 is/are pending in the application.
- 4a) Of the above claim(s) 33, 35, 36, 38 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-32, 34, 37 and 40-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Examiner acknowledges receipt of applicants' response to the election requirement, amendment and remarks filed 03/14/05. Claims 28-43 are pending.

Election Requirement

Applicants elected polymer resin made from isocyanate polymerization. Applicants also elected surface modifying compound of formula (IV) where X is NH₂; Y is polyoxypropylene, Y' is C₃H₆, an n-propylene; and Z is a sulfonate. Applicants traversed the election requirement and in traversing, applicants state that the "restriction requirement" should be reconsidered. The office action of 02/14/05 is an election requirement and upon the allowance of a generic claim, applicants will be entitled to consideration of claims to additional species.

Applicants' election with traverse of polymer resin of species (a) and surface modifying compound formula IVA with X as NH₂, Y as polyoxypropylene, Y' as C₃H₆ and Z as sulfonate in the reply filed on 03/14/05 is acknowledged. The traversal is on the ground(s) that the subject matter are interrelated and as such that classification in separate classes should not be the overriding factor. This is not found persuasive because the requirement is an election of species. The election requirement is necessary for prosecution of single disclosed microcapsule that is completely defined by a specified single polymer and surface-modifying compound. It is also noted that election of the material encapsulated in the microcapsule should have been required since agrochemical, ink, dye, and biologically active material and pharmaceutical are candidate materials for encapsulation in the microcapsule (see claims 41 and 42). It is also noted that applicants' referral to the process of example 3 in the specification appears to represent impermissible importation of limitations from the specification into the claims. Therefore, the

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process in example 3 has not been considered as a claim limitation. However, to expedite prosecution, the claims identified by applicants as reading on the elected specie are considered. The requirement is still deemed proper and is therefore made FINAL.

Applicants identified claims 28-32, 34, 37 and 40-43 as readable on the elected species. Therefore, claims 33, 35, 36, 38 and 39 are withdrawn from consideration. It is also noted that the invention submitted with the RCE is a different invention from the originally claimed invention and new invention may not be claimed in the filling of RCE (see MPEP 706.07(h)). It is also noted that a method of encapsulating a dispersed material (claim 34) differs from a method of modifying soil mobility (claim 43). Applicants are respectfully requested to provide support for formula IVA in the specification as originally filed.

Claim Objections

1. Claim 34 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. See MPEP § 608.01(n).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claim 43 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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4. Claim 43 recites the limitation "the soil mobility" in line 1. There is insufficient antecedent basis for this limitation in the claim. Claim 34 does not provide support for "the soil mobility."

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 28-31, 34, 37 and 40-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Mikami et al. (US 4,465,756).

Mikami discloses polyurea or polyurethane polythiourea capsule shell and a process of preparing the shell (column 4, lines 27-61); the shell material is a polycondensation product of polyisocyanate, polyol and water or polycondensation product of polyisocyanate, polyol and polyamine (column 4, lines 62-65); droplets of toner particles and dye materials are encapsulated in the core of the capsule shell (abstract; column 4, lines 66-68; column 5, lines 8-11; column 8, lines 20-43; column 10, lines 16-50). The outer surface of the shell is provided with surface active agent selected from the group consisting of sulfonate, carboxylate, phosphate, amine, quaternary ammonium salt and pyridinium salt (column 3, lines 60-65). The surface-active agents can be anionic and an example is sodium tetradecylamidophenylsulfonate (column 11, lines 49-57), which reads on formula IVA of the instant claim.

7. Claims 28, 29, 34 and 40-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Seitz et al. (US 5,925,595).

Seitz discloses a process of preparing a microencapsulated composition and the method comprises combining triisocyanate, aliphatic diisocyanate and polyamine and incorporating

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agricultural chemical such as herbicide within the microcapsule (abstract; column 2, line 21 to column 4 line 20). Sulfonated naphthalene-formaldehyde condensates, modified starches (column 4, lines 10-20) and calcium and sodium lignosulfonates (column 8, lines 13 and 14) are colloids that are included in the polyurea shell.

8. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicants' cooperation is requested in correcting any errors of which applicants may become aware in the specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is (571) 272-0594. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Blessing Fubara
Patent Examiner
Tech. Center 1600

